motor car. After a conversation between accused and the four Malays the former took them in his car to their place of destination. Later he (first witness) made a report at the Lenggong Police Station. The second witness, a police corporal, said that he received a telephone message from Lenggong asking him to stop a certain car plying for hire. As a result he came to Kati and stopped the said car and found there were four Malay passengers in it.

At the conclusion of the case for the prosecution the Magistrate, Lenggong, found that there was no case for the accused to answer and acquitted and discharged him.

The Public Prosecutor lodged an appeal against this finding mainly on the ground that the Magistrate ignored the provisions of section 113 (2) (b) of the Road Traffic Enactment, 1937, and that the Magistrate should have called on the defence. The appeal was allowed by the Judge who reversed the order of acquittal in the Summons case and ordered that the case be sent for a new trial before another Magistrate.

T. V. A. Brodie, Assistant Legal Adviser, for Public Prosecutor.

Respondent in person.

Murray-Aynsley, J.—In this case the Magistrate seems to have overlooked the presumptions created by Sec. 113 (2) of Enactment 17 of 1937. By reason of that Enactment there was evidence against the Respondent to be considered—indeed the principal fact alleged, that there were passengers in the car, does not appear to have been in issue. In these circumstances the defence should have been called on.

There must be a new trial before another Magistrate.

New trial ordered.

[APPELLATE CIVIL JURISDICTION]

RAJA MUSA, Ag. J.

July 20, 1939.

TEH BINTI CHIK

v.

KELSOM BINTI HAJI ABAS.

(KUANTAN CIVIL APPEAL No. 1 of 1939)

Probate and Administration Enactment, 1920, s. 179—joint cultivation of husband's property by husband and wife—death of husband—distribution.

KHA (f) and ABC (m) were married at Beserah in Pahang in or about 1928. Prior to the marriage ABC was possessed of three pieces of land two of which were at that time practically uncultivated.

Husband and wife cultivated and planted these two pieces of land by their joint labour.

On the death of ABC, KHA claimed that before the inheritance was distributed a share in each of these pieces should be allotted to her as "harta sepencharian."

Held, on appeal, that since the property had been acquired prior to marriage it could not be "harta sepencharian" but that either spouse could claim "upah" for work done on the other's property.

APPEAL from decision of Collector of Land Revenue in Distribution.

Appellant appeared by her Attorney Omar bin Awang.

Respondent in person.

Cur. Adv. Vult.

Raja Musa, Ag. J.—I order that this matter be referred back to a different Collector for retrial.

"Harta Sepencharian" is only applicable to property acquired during marriage and not to property acquired before marriage.

Where property has been acquired before marriage and either spouse has put in money or labour to that property Harta Sepencharian does not apply but either spouse is entitled to claim what is known as "Upah" which is remuneration for work done.

This matter is remitted back to the Collector for him to ascertain whether or not the Respondent is entitled to claim "Upah" and if so how much.

No costs of the appeal.

Case remitted back.

(REVISIONAL CRIMINAL JURISDICTION)

June 28, 1939.

POYSER, C.J.

RE MOHAMED MISKIN SON OF KADER BACHA.

(SABAK BERNAM CRIMINAL CASE No. 48 of 1939)

Penal Code, S. 431A—mischief—plea of guilty—conviction—ingredients of offence not explained to accused on pleading guilty—irregularity.

An accused pleaded guilty to a charge of causing mischief by cutting a cable belonging to the Posts and Telegraphs Department and was convicted and fined $25. At the time that the accused pleaded guilty the Magistrate did not explain to him the legal position with regard to the charge. On revision by the Supreme Court:—

Held, that when the accused pleaded guilty his statement was in effect an admission that he was responsible for the cutting of the cable and there was no indication in the statement that he intended to cut